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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JOEL BAKER,

Plaintiff and Appellant,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT,

Defendant and Respondent.

A106348

(Alameda County
Super. Ct. No. 2001-021036)

Joel Baker appeals, in pro. per., from summary judgment granted in favor of defendant Oakland Unified School District (District) in this employment discrimination action. Baker sued the District, alleging that it breached an employment contract with him and alleging that he was terminated because of, among other things, his race and age. He contends a triable issue of fact exists regarding the date of his termination. He further contends that the trial judge committed prejudicial error by granting summary judgment when another judge had overruled the District's demurrer. We affirm.

BACKGROUND

Baker was employed by the District as a tenured counselor. On October 27, 1999, the District sent Baker a letter notifying him that he was being terminated due to his poor attendance; he had not reported to work since September 2, 1999. On May 10, 2000, the District notified Baker of its intent to dismiss him for cause. (Ed.

Code,¹ § 44932 [specifying causes for dismissal of permanent employees].) Baker timely demanded a hearing, thus requiring the District either to rescind its action or schedule a hearing. (§ 44943.)

Hearings to determine whether public school employees should be dismissed or suspended are held before the Commission on Professional Competence (Commission)—a three-member administrative tribunal consisting of one member selected by the employee, one member selected by the governing board, and “an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing.” (§ 44944, subd. (b); *California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 331-332 (CTA).) The Commission’s decision is deemed to be the final decision of the governing board. (§ 44944, subd. (c); *CTA, supra*, 20 Cal.4th at p. 332.)

On April 19, 2002, following a two-day hearing, the Commission unanimously determined that Baker should be dismissed for dishonesty (§ 44932, subd. (a)(3)); persistent violation of District rules (§ 44932, subd. (a)(7)); unprofessional conduct (§ 44932, subd. (a)(1)); and evident unfitness for service (§ 44932, subd. (a)(5)). The Commission found that Baker was excessively absent from work; failed to observe the District work schedule; lied about his actual hours worked; lied about time needed for jury duty; and tried to initiate an argument with a supervisor, when confronted about his work schedule, in front of parents, students, and other employees. The Commission cited to several specific examples of Baker’s misconduct occurring as early as October 1996 and as late as February 2000.

Baker sought judicial review of the Commission’s decision. (§ 44945.) The trial court denied Baker’s petition for writ of mandate. (Alameda County Super. Ct.

¹ All further statutory references are to the Education Code unless otherwise indicated.

No. 2002-055191.) Baker's subsequent petition for writ of mandate in the Court of Appeal was denied.

While Baker's dismissal was pending he filed a civil complaint against the District alleging wrongful termination. The District moved for summary judgment on the grounds that Baker was terminated by the Commission, an independent governmental agency, and that as a matter of law Baker could not establish that the decision to terminate his employment was discriminatory or pretextual. The trial court granted the District's request to take judicial notice of all pleadings and documents in Baker's writ petition action. (Alameda County Super. Ct. No. 2002-055191.) The trial court found that Baker previously admitted in his writ action that the Commission conducted the termination proceedings against him and upheld the District's accusations. The trial court ruled that Baker was statutorily barred from pursuing his wrongful termination claim against the District, finding that his only recourse was to challenge the decision of the Commission, something he had already unsuccessfully attempted.

DISCUSSION

A. Standard of Review.

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*)). Summary judgment is proper only where there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra*, 25 Cal.4th at p. 843.) A defendant seeking summary judgment is required to show that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subds. (p)(2) & (o)(2); *Aguilar, supra*, 25 Cal.4th at p. 849.) Once the defendant has met this threshold requirement, the burden shifts to the plaintiff to

show the existence of one or more triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 850.)

We review the trial court's grant of summary judgment de novo, applying the same standards that governed the trial court. (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.) We consider all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports. (*Artiglio v. Corning Inc.* (1998) 18 Cal.4th 604, 612.)

B. The Trial Court Properly Granted Summary Judgment.

Baker contends a triable issue of material fact exists as to the date of his termination. Baker argues that his "actual non-statutory termination was on October 27, 1999; not April 19, 2002 as presented by [the District]." Baker relies on purported "parol evidence" to establish that the October 27, 1999 letter constitutes his "non-statutory" termination. His evidence is as follows: (1) an unemployment insurance claim and award, referencing Baker's last day worked with the District as February 17, 2000; (2) a statement from the California State Teachers' Retirement System, indicating that Baker's last employee contribution was made on December 31, 1999; and (3) a letter from the Internal Revenue Service, stating that the last time Baker received wages from an employer was in the year 2000.

The Education Code sets forth the procedure for terminating a public school employee. (§ 44932 et seq.) Under that procedure, an employer is required to serve the employee with a notice of intent to dismiss, statement of charges, and an accusation. (§§ 44932, 44934.) The employee then has the right to a hearing on the charges. (§§ 44934, 44944.) If the employee requests a hearing, all further proceedings regarding the termination are conducted by the Commission. (§ 44944, subd. (b).)

While the October 27, 1999 letter from the District references Baker's "termination," the record reflects that the procedure set forth by the Education Code was followed in the instant case and that Baker was actually terminated on April 19,

2002. In the April 19, 2002 decision terminating Baker's employment, the Commission references that it considered various violations occurring as late as February 2000. Even Baker's own "parol evidence" establishes that he continued to work for the District at least until February 2000. Accordingly, Baker's argument that there is a triable issue of material fact that he was nonstatutorily terminated on October 27, 1999, is without merit.

C. The Same Judge Was Not Required.

Baker argues that it was prejudicial error for Judge Steven Brick to hear the District's summary judgment motion because Judge James Richman had previously ruled on the District's demurrer. While it is an established rule that one trial court judge may not reconsider and overrule a ruling of another judge, the instant case does not violate this rule. (See *Curtin v. Koskey* (1991) 231 Cal.App.3d 873, 876.)

Demurrers and motions for summary judgment serve fundamentally different purposes. A demurrer is a facial attack on the pleadings. (See Code Civ. Proc., § 430.10; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The relevant inquiry before the court is whether a complaint states facts sufficient to state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) In ruling on a demurrer, the trial court assumes all facts pleaded in the complaint, however implausible, are true. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) Whereas a motion for summary judgment asks the trial court to look beyond the pleadings to determine whether an action has no merit. (See Code Civ. Proc., § 437c.) Unlike a demurrer, a motion for summary judgment must be supported by evidence establishing the moving party's right to the relief sought. (See Code Civ. Proc., § 437c, subd. (c); *Regents of University of California v. Superior Court* (1996) 41 Cal.App.4th 1040, 1044.) Accordingly, Judge Brick did not reconsider or overrule Judge Richman's ruling on the District's demurrer when he granted summary judgment.

D. The Trial Court Properly Granted the District's Request for Judicial Notice.

Appellant contends that the trial court erroneously granted the District's request for judicial notice because the District committed "extrinsic fraud" by concealing the request in its motion for summary judgment. There is nothing in the record supporting Baker's claim that the District concealed its request for judicial notice or otherwise failed to put Baker on notice of this request. Additionally, the contents of Baker's writ petition file in Alameda County Superior Court No. 2002-055191 was a proper subject for judicial notice. (Evid. Code, § 452, subd. (d)(1).)

DISPOSITION

The judgment is affirmed.

Reardon, Acting P.J.

We concur:

Sepulveda, J.

Rivera, J.